



December 13, 2000

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-4695

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142161.

The City of Houston (the "city") received a request for an internal affairs investigation report regarding a deceased city police officer (the "officer") and a separate request for the report compiled by the homicide detective who investigated the suicide of the officer. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.022 of the Government Code lists several categories of information that cannot be withheld on the basis of a permissive exception to disclosure. In pertinent part this section provides:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

From our review of the submitted information, we conclude that the responsive information consists of completed reports or investigations made by the city. Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not "other law

“that makes information confidential. *See* Open Records Decision No 551 (1990) (statutory predecessor to section 552.103 servers only to protect a governmental body’s position in litigation and does not in itself make information confidential). Therefore, the responsive information may not be withheld under section 552.103 of the Government Code.

Notwithstanding the applicability of section 552.022, confidential information must be withheld under section 552.101 of the Government Code. This section excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.” It encompasses information protected by other statutes. You assert that the submitted materials are confidential under section 143.089 of the Local Government Code.

Section 143.089 of the Local Government Code provides for the maintenance of a police civil service file and what may be kept in that file:

(a) The director or the director’s designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person’s official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person’s personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person’s personnel file as provided by subsection (a)(2) shall be removed from the employee’s file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that subsections 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

You represent that the city conducted an internal affairs investigation into allegations of misconduct by the subject officer. You also relate that due to the suicide of the investigated officer, this investigation did not result in disciplinary action, and therefore the information is a personnel record made confidential by section 143.089(g) of the Local Government Code. We note that the submitted materials indicate that a purported victim reported to the Houston Police Department that she was sexually assaulted by the officer and that the investigation into that allegation was a criminal investigation. The materials also indicate that the sexual assault investigation was turned over to internal affairs division officers, and that the results of their investigation were presented to the Harris County district attorney for prosecution, although the district attorney's office declined to accept criminal charges. Similarly, the investigation of the apparent suicide of the officer was an investigation by city police officers into a violent death. Although no crime was found to have been committed, the investigation was a law enforcement action conducted by the city police department. To the extent that the requested records are maintained only within a section 143.089(g) file they are confidential and must not be disclosed. Gov't Code § 552.101. However, if the records exist elsewhere, outside a section 143.089(g) file, these records are subject to disclosure under the Public Information Act unless this office determines that other exceptions to disclosure apply to the information.

Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Applying that standard, our office opined that the identity of juvenile victims of serious sexual offenses is confidential. Open Records Decision No. 628 (1994). We have also held that the identities of all victims of serious sexual offenses is confidential. Open Records Decision No. 339 (1982). Also, as "other information, such as the location of the crime, might furnish a basis for identification of the victim" such information is not subject to disclosure. *Id.*

Therefore, information which would identify the alleged victim of sexual assault in the responsive materials must be withheld. We have marked the type of information which must be withheld under section 552.101.

The submitted materials also include social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

The submitted documents also contain information that may be excepted from public disclosure by section 552.117 of the Government Code. Section 552.117(2) requires you to withhold information pertaining to a peace officer if the information relates to the home address, home telephone number, social security number, or reveals whether the peace officer has family members.

The submitted information also includes medical records. Release of medical records is governed by chapter 159 of the Occupations Code, the Medical Practices Act ("MPA"), which provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). The MPA provides specific release provisions. *See* Occ. Code §§ 159.004(5), 159.005(1) (providing that otherwise

confidential medical information may be released to a person who bears a written consent of the patient, subject to certain requirements). We have marked the records which are subject to the MPA. You may release such records only in accordance with the MPA.

In summary, if the responsive information is maintained solely in a file maintained by the department under section 143.089(g) of the Local Government Code, it must be withheld in its entirety. Irrespective of the file in which the information is maintained, information which identifies the purported victim of sexual assault; social security numbers that are obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990; social security numbers, and home addresses, home telephone numbers and information indicating that an officer has family members, of police officers; must be withheld. Medical records may only be released in accordance with the Medical Practices Act. Information that has not been found to be excepted from disclosure must be released.

As the above discussion disposes of this request, we do not address the other arguments that you have raised. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

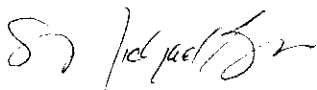
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 142161

Encl: Submitted documents

cc: Ms. Sharon Levine
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(w/o enclosures)